

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: June 21, 2000
TIME: 9:00 am
PLACE: DLNR Board Room
Kalanimoku Bldg.

Chairperson Timothy E. Johns called the meeting of the Commission on Water Resource Management to order at 9:15 a.m.

The following were in attendance:

MEMBERS: Mr. Timothy E. Johns, Dr. Bruce Anderson, Mr. Robert Girald,
Mr. Brian Nishida, Mr. Herbert Richards, Jr.

EXCUSED: Mr. David Nobriga

STAFF: Ms. Linnel Nishioka, Mr. Roy Hardy, Mr. Ed Sakoda, Mr. Eric
Hirano, Mr. Dean Nakano

COUNSEL: Linden Joesting

OTHERS: Manabu Tagomori, Rebecca Alakai, Karen Piltz, Steve Holmes,
Darrell Yagodich, John Reppun, Dudley Kubo, Bob Nakata, Jim
Pennaz, Kapua Sproat

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties. The items were not taken in the order posted on the agenda.

1. Minutes of the May 31, 2000 meeting

MOTION: (GIRALD/RICHARDS)
To approve the minutes.
UNANIMOUSLY APPROVED.

2. Old Business/Announcements by Deputy Director Linnel Nishioka

Commissioner Nobriga was not present at this meeting due to surgery and is recuperating at home on Maui.

3. Earthjustice Legal Defense Fund, Inc., Waiahole-Waikane Community Association, Hakipu'u Ohana, Ka Lahui Hawaii, Kahalu'u Neighborhood Board No. 29, Makawai Stream Restoration Alliance, and Kamehameha Schools Status Report on Waiawa Water Use Report

Mr. Manabu Tagomori of Kamehameha Schools and Mr. Charlie Reppun of Waiahole-Waikane Community Association gave a joint report. Mr. Tagomori stated since the last meeting in May, 2000 the parties met twice and set up the ground rules of discussing the issues. First, topic-wise, the Gentry project will be talked about, the water use issue and some regulatory programs dealing with Federal, State and County. They have identified future meetings to discuss these issues and have already met on June 15. The upcoming meeting dates are set for June 26 and July 17. USFilter attended their second meeting and presented information on their project in Ewa, generally involving the cost factor and the general use of the water. Mr. Reppun will elaborate on that meeting since Mr. Tagomori was not in attendance. All parties are hopeful that more substantive issues will be reported next month.

Mr. Reppun expanded in stating that the main focus would be on the issue of reuse from this project itself and over a potable aquifer. The first stage would be to bring in USFilter who has the expertise in putting together a wastewater treatment plant, wastewater systems and what needs to be dealt with. Pursuant to that at the second meeting, discussions on how USFilter would need to put together a preliminary plan like the Waiawa project. That information will be given to them either by Gentry or Kamehameha Schools. Mr. Reppun stated that they are hopeful at the next meeting that Gentry will do a presentation on the layout of their project. The second stage would be to look at regulations involved for water reuse over a potable aquifer. The next phase is the cost factor; what is the cost of the project and the roles of the City and State governments. The last phase is inviting Commission staff for monitoring future sessions. Mr. Reppun stated that he would like to see a member of the Commission staff be present at the next meeting not as a mediator but as a participant to assist and help the process. He felt that it is proper and would help the parties.

Dr. Anderson stated that the Department of Health would provide technical support and assistance with their wastewater reuse guidelines and have staff attend their meetings that are appropriate when discussing that subject.

5. Reppun, Friola, Hoe, et. al., After-the-Fact, Application for a Stream Channel Alteration Permit (SCAP-OA-248), Ford Crossing, Waianu Stream, Waiahole, Oahu (TMK 4-8-12:21)

PRESENTATION OF SUBMITTAL: Ed Sakoda

RECOMMENDATIONS:

The staff recommends that the Commission:

1. Order that the verification of completion of Section A of the Commission's February 17, 1999 order be submitted no later than 9:00 a.m. on June 21, 2000.
2. Order that the report required in Section C of the Commission's report be submitted no later than 9:00 a.m. on June 21, 2000.

3. That a fine of \$250 be imposed should the applicants fail to comply with 1 and/or 2 above.

TESTIMONY BY APPLICANT:

Mr. John Reppun said that a report was submitted regarding community service time primarily in the form of 2 different activities: 1) Hui Kalo effort which is associated with Queen Liliuokalani Children's Center, and 2) taro growers around the State and ongoing discussions of the requirements, permit procedures, concerns relating to watershed management around taro growing.

Mr. Reppun stated also that in their report that is in response to the staff submittal, he is requesting for an extension of time in taking out the ford. It is the only way in and out to their farm. They have not come up with an alternative access, but Mr. Reppun feels that some progress has been made with the Housing and Community Development Corporation of Hawaii (HCDCH). He stated that they have established themselves as cooperators with the Soil and Water Conservation District and have done site visits and walk throughs at various locations to come up with some options and opportunities for access through the reservoir property. Although Natural Resource Conservation Service (NRCS) and HCDCH told Mr. Reppun that no funds were available to assist him, the Soil and Water Conservation District said they would help the Reppuns in this matter.

Mr. Reppun added that a long-term lease with HCDCH has not been obtained thereby reducing the chance of obtaining grants for technical assistance from the Soil and Water Conservation District. The Commission has sent HCDCH a letter stating that the violation has been resolved, but HCDCH has not been helpful in providing assistance.

Mr. Reppun stated that a request for a meeting between parties has been made through the Soil and Water Conservation District. This meeting between parties would be to discuss the exchange with the Fialkowskis. This will involve surveyor costs and finding the pins for the lease.

Deputy Director Nishioka stated that after a couple of meetings with Neal Wu of HCDCH, he suggested that the Reppuns talk to the Executive Director. They had discussions with the Board of Water Supply on the reservoir site which is one of their concerns about the permitting of access.

Senator Bob Nakata stated that he will be meeting tomorrow, June 22, 2000, at HCDCH with the Acting Executive Director.

Councilman Steve Holmes asked the Commission to grant an extension to the Reppuns if possible. He stated that he would assist the Reppuns as much as possible. Councilman Holmes also stated that HCDCH is not providing adequate service to the public. He stated that he has worked with the City's Planning and Permitting Department and feels that the permitting process will be handled very quickly. This, he said, would not need council action.

Chairperson Johns asked to move into executive session to ask counsel questions about the Commission's ability to fine, as of our new policy and regulations are concerned.

MOTION: (RICHARDS/GIRALD)

At 10:33 a.m. the Commission went into Executive Session. Item 9 of the agenda was also conducted at this session.

The meeting was resumed at 11:02 a.m. Chairperson Johns stated that they were able to discuss the legal rights, immunities and liabilities with counsel. He stated that this item will be deferred for 30 days so at this time no extension will be granted for the August 17 deadline. Chairperson Johns requested that during the next month, staff work on a submittal for the July meeting with the following: 1) an evaluation of community hours that have been submitted in compliance of the initial order; 2) an analysis of the extension if needed. In the interim, the Chair encouraged the Reppuns to work with HCDCH and pursue an alternative with the neighbors, Fialkowski. Chair added that if the matter does need an extension in July, the Commission will be looking at additional penalties if an extension is needed. The feeling of the Commission at this point is extensions cannot be granted "forever" with no consequences.

Chairperson Johns then asked for a motion to defer to the next meeting.

MOTION: (RICHARDS/NISHIDA)

To defer the submittal to the next meeting, July 2000.

UNANIMOUSLY APPROVED TO DEFER

6. **Department of Hawaiian Home Lands/Castle & Cooke Homes, Inc.
MODIFICATION OF A WATER USE PERMIT (WUP No. 521) Waipahu Wells III
(Well Nos. 2400-09 to 13), TMK 9-4-05:74 New Domestic, Irrigation, Agriculture,
and Commercial Use for 0.249 mgd Waipahu-Waiawa Ground Water Management
Area, Oahu**

PRESENTATION OF SUBMITTAL: Ms. Lenore Nakama

RECOMMENDATIONS:

Staff recommends that the Commission approve the issuance of an interim five-year water use permit (WUP No. 521) to the Department of Hawaiian Home Lands/Castle & Cooke Homes, Hawaii for the reasonable and beneficial use of 248,810 gallons per day of potable water for domestic and irrigation use from the Waipahu Wells III (Well Nos. 2400-09 to 13), subject to the standard water use permit conditions listed in Attachment B and the following special conditions:

1. This water use permit, WUP No. 521, shall supersede WUP No. 434.

2. The Chairperson shall approve the transfer and modification of WUP No. 521 to Honolulu Board of Water Supply (BWS) when BWS assumes full responsibility for operation and control of the source.
3. The accounting of the water reserved by Administrative Rule 13-171-61 shall show that an additional 222,310 gpd has been allocated to Waipahu Wells III (Well Nos. 2400-09 to 13).
4. Department of Hawaiian Home Lands shall submit a petition to amend Administrative Rule 13-171-62 to reduce the quantity of ground water reserved from state lands in the Waimanalo Aquifer System by 44,200 gpd.
5. In the event that the tax map key at the location of the water use is changed, the permittee shall notify the Commission in writing of the tax map key change within thirty (30) days after the permittee receives notice of the tax map key change.
6. This interim water use permit shall cease to be interim and shall become subject to Haw. Rev. Stat. § 174C-55 upon review of the quantity within 5 years, provided that all conditions of the use (including the review of the quantity which shall not be greater than the amount initially granted) remain the same.

The Department of Hawaiian Home Lands submitted written testimony in support of staff's submittal.

MOTION: (RICHARDS/GIRALD)

To approve the submittal.

UNANIMOUSLY APPROVED.

7. U.S. Army Corps of Engineers Application for a Stream Channel Alteration Permit (SCAP-OA-303) Sewer Line Replacement, Manaiki Stream, Honolulu, Oahu, (TMK: 1-1-09:4)

PRESENTATION OF SUBMITTAL: Mr. Edwin Sakoda

RECOMMENDATIONS:

That the Commission approve a stream channel alteration permit for Sewerline Replacement at Manaiki Stream (TMK: 1-1-9:4). The permit will be valid for two years subject to our standard permit conditions in Exhibit 5.

MOTION: (ANDERSON/NISHIDA)

To approve the submittal.

UNANIMOUSLY APPROVED.

8. Division of Forestry & Wildlife Application for Stream Channel Alteration and Stream Diversion Works Permits and Petition to Amend the Interim Instream Flow Standard (SCAP-OA-309) Pouhala Marsh Restoration and New Damselfly Habitat,

Kapakahi Stream, Waipahu, Oahu, (TMK:1-9-3-01:2, 4, 6,12, 21 & 22 and 1-9-3-02:9 & 27)

PRESENTATION OF SUBMITTAL: Mr. Edwin Sakoda

Mr. Sakoda made corrections to the staff's submittal. On page 3 of the submittal, third paragraph, the word "damsselfly" which appears 3 times, should be replaced by the word "waterbird".

RECOMMENDATIONS:

That staff amends submittal and recommendations as follows:

That the Commission approve a stream channel alteration permit and stream diversion works permit, and petition to amend the interim instream flow standard for a diversion on Kapakahi Stream, for Restoration of Pouhala Marsh, and creation of a Waterbird and Damsselfly Habitat (TMK:1-9-3-01:2, 4, 6, 12, 21 & 22 and 1-9-3-02:9 & 27). The stream channel alteration permit and stream diversion works permits will be valid for two (2) years subject to our standard permit conditions in Exhibit 5. The interim instream flow standard amendment will be subject to our standard conditions for interim instream flow standard amendments in Exhibit 6.

TESTIMONY BY APPLICANT:

Chairperson Johns wanted clarification on a conservation district use application on a request for contested case hearing from Tesoro stating that Tesoro did not make comment on this application.

Mr. Paul Conry of the Division of Forestry and Wildlife stated that Tesoro's concern was the location of the perimeter fence that is on the other side of the project. Therefore, Tesoro has no concerns about the water diversion.

Mr. Conry also added that the Division of Forestry and Wildlife is in support of staff's submittal.

MOTION: (RICHARDS/GIRALD)

To approve the submittal as amended.

UNANIMOUSLY APPROVED AS AMENDED.

4. Update on the Status of the Hiilawe Falls Restoration; Commission Order 99-01 by the Department of Agriculture

Mr. Paul Matsuo introduced Mr. James Pennaz of the Army Corps of Engineers. He became the Department of Agriculture's consultant to provide technical assistance on this project. Mr. Matsuo stated that the Request For Qualification (RFQ) process was submitted and turned out feasible.

Mr. Jim Pennaz stated that a Memorandum of Agreement (MOA) has been established with the Department of Agriculture (DOA) to provide technical assistance on various projects. Under this MOA a subagreement has been established to provide technical assistance on the tunneling for the Lower Hamakua Ditch. A determination was made with the DOA that this project should be undertaken as a design-build project. A solicitation was prepared, reviewed by the State and was revised. This was distributed to various contractors who were interested in the tunneling project. Contractors were prequalified based on their submissions. The tunneling is going to bypass that portion of the damaged tunnel. It is about a 7 x 7-ft. tunnel and approximately 280 feet long. As part of this design-build project, criteria are now being developed for the contractors to include in their bids for the project. The criteria will include information on how they intend to do the work, types of plans and specifications, safety plan, tunneling reinforcement, etc. Mr. Pennaz stated that this document that is in preparation should be completed at the end of the month. (June 30) Mr. Matsuo will then distribute to interested contractors. The contractors will then submit their bids for the tunneling project. The awarding of the contract is set for the end of July 2000. Submittals from contractors should be received by July 28 or early August. This will be reviewed, then a notice to proceed will be issued sometime in August. Mobilization will follow and eventually construction.

Mr. Pennaz said that the contractors have different ways of removing the materials from the tunnel and disposing of same. The disposing is a key issue because subcontractors have proposed taking the material completely out of the tunnel and disposing of it at the entrance. Others have proposed disposing of the material outside of the tunnel and grouting it in place. This way, the material would not be disposed of at the tunnel entrance. At this reporting, Mr. Pennaz did not know what method the contractors would be proposing to use or how the materials will be disposed. Mr. Pennaz stated that if the falls were to be turned on, it would be very hazardous for the contractors working on the tunnel. Mr. Pennaz's recommendation is to keep the diversion in place for now until the method of removing the materials has been determined. One of the proposals is to take some of the material and put a transition outside the tunnel. The rest of the material would be placed where the existing tunnel is located. Another proposal is to put the material on barges and haul it out to the tunnel entrance and dispose of it there.

Commissioner Giraldo and Chairperson Johns stated that they both did not feel comfortable about the grouting of materials outside of the tunnel because of the concern that the grouted material may create a hazard.

Deputy Director Nishioka stated that the grouting may trigger another permit application.

Commissioner Richards stated that the contractors submit pictures of places where this type of grouting for a similar project was constructed.

State Geologist Glenn Bauer stated that his concern was that if materials were plastered with grout it would eventually be knocked out. He suggested disposing the material at some of the other adits after checking.

Chairperson Johns requested of Mr. Matsuo that the notice to proceed be completed by the time of the next Commission meeting at Honokaa in August. He also requested that Commission staff review contractor proposals with regard to grouting.

Mr. Matsuo stated that a copy of the contractor's proposal will be submitted to the Commission sometime late July or early August.

Commissioner Anderson suggested a site visit the day before the meeting in August.

This meeting was adjourned at 11:45 am.

Respectfully submitted,

FAITH F. CHING
Secretary

APPROVED AS SUBMITTED:

LINNEL T. NISHIOKA
Deputy Director